

AMENDED IN ASSEMBLY JUNE 16, 2004

AMENDED IN SENATE MAY 24, 2004

SENATE BILL

No. 1374

Introduced by Senator Machado

February 18, 2004

An act to amend Section 1736 of, and to add Sections 1738, 1738.5, ~~and 1739~~ 1739, and 1739.5 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1374, as amended, Machado. Water transfers: economic or environmental impacts.

Existing law authorizes the State Water Resources Control Board to approve a petition for a long-term transfer of water if the change would not result in substantial injury to a legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

This bill, in addition, would authorize the board to approve that petition only if the board notifies, among others, the county of transfer and the board determines that the proposed transfer would not cause unreasonable economic or environmental impacts. With regard to that determination, *and subject to a certain exception*, the bill would prohibit the board from approving the petition unless it finds that the petitioners have met prescribed conditions relating to economic or environmental impacts. The bill would require the board to accept and consider evidence that the proposed transfer will likely cause unreasonable economic or environmental impacts. The bill would authorize the board to develop and adopt an abbreviated process to approve long-term transfers that it determines are least likely to cause unreasonable economic or environmental impacts.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Water transfers can be win-win solutions to regional water
4 problems. However, if the transfer is not structured properly,
5 innocent third parties can be significantly harmed.
6 (b) With short-term transfers, the problems with third-party
7 impacts, while potentially significant, are by their nature
8 short-term phenomena. However, as we move to increasingly
9 longer term transfer agreements, the potential for continuing
10 problems becomes more significant.
11 (c) The persons most likely to be negatively affected by water
12 transfers include all of the following:
13 (1) Groundwater users who share the groundwater basin from
14 which water will be transferred or used in lieu of transferred
15 surface water.
16 (2) Employees of farms or other economic concerns whose
17 employers plan to reduce production through fallowing or other
18 means in order to free up water for transfer.
19 (3) Local governments whose case loads would increase, and
20 whose revenues would decrease, or both, as a result of reduced
21 local economic activity associated with the transfer of water.
22 (d) Transfer structures least likely to negatively affect third
23 parties include transfers of conserved water.
24 (e) In developing long-term water transfers, it is desirable that
25 proponents of the transfer bring interested third parties into the
26 discussion as early as possible.
27 (f) This act is necessary to ensure that long-term water transfers
28 do not impose unreasonable economic or environmental impacts.
29 SEC. 2. Section 1736 of the Water Code is amended to read:
30 1736. The board, after providing notice and opportunity for
31 a hearing, including, but not limited to, written notice to, and an
32 opportunity for review and recommendation by, the Department
33 of Fish and Game and the county of transfer, may approve a
34 petition for a long-term transfer if the board determines that the
35 change would not result in substantial injury to any legal user of

1 water, would not cause unreasonable economic or environmental
2 impacts, and would not unreasonably affect fish, wildlife, or other
3 instream beneficial uses.

4 SEC. 3. Section 1738 is added to the Water Code, to read:

5 1738. In making a determination regarding unreasonable
6 economic or environmental impacts pursuant to Section 1736, the
7 board may not approve the petition unless it finds that the
8 petitioners have met all of the following conditions:

9 (a) The petitioners made a good faith effort to fully disclose the
10 structure, timing, and financing of the transfer to all persons who
11 are likely to be affected by the proposed transfer.

12 (1) As used in this section, the term “structure” includes all of
13 the following:

14 (A) The source of water.

15 (B) The water rights affected.

16 (C) The method of making the water available, including, but
17 not limited to, conservation, groundwater substitution, or forgoing
18 economic activities, such as fallowing farm land.

19 (D) The method of transporting the water, including, but not
20 limited to, either of the following:

21 (i) In the case of physically moving the water from the
22 transferor to the transferee, the type and ownership of the
23 conveyance system or systems.

24 (ii) In the case of an exchange or in-lieu transfer, the source of
25 the water to be exchanged.

26 (E) The method of administering the transfer, including, in the
27 case of a transfer of conserved water, the method of verifying that
28 the water transferred equals the amount conserved.

29 (F) The extent to which the transfer either conforms to, or
30 conflicts with, any of the following:

31 (i) An integrated regional water management plan adopted
32 pursuant to Part 2.2 (commencing with Section 10530) of Division
33 6.

34 (ii) An urban water management plan adopted pursuant to
35 Chapter 3 (commencing with Section 10620) of Part 2.6 of
36 Division 6.

37 (iii) A groundwater management plan adopted pursuant to
38 Chapter 3 (commencing with Section 10753) of Part 2.75 of
39 Division 6.

1 (iv) An agricultural water management plan adopted pursuant
2 to Chapter 3 (commencing with Section 10820) of Part 2.8 of
3 Division 6.

4 (v) A water supply and demand assessment conducted pursuant
5 to Section 10910.

6 (2) As used in this section, the term “timing” includes all of the
7 following:

8 (A) The term of the transfer agreement, including any options
9 for early termination or contract extensions.

10 (B) The quantity of water to be transferred each year for the
11 duration of the transfer agreement.

12 (3) As used in this section, the term “financing” includes all of
13 the following:

14 (A) The price of the water transferred.

15 (B) Costs of transporting the water.

16 (C) The costs of administering the transfer.

17 (D) The costs to mitigate any economic or environmental
18 impacts.

19 (E) The intended uses of the proceeds of the transferor.

20 (b) There was sufficient opportunity for persons likely to be
21 negatively affected by the proposed transfer to present information
22 documenting those likely effects to the petitioners, and offer
23 alternatives that would avoid or mitigate those effects. The
24 threshold for sufficiency of opportunity to present information
25 varies directly with all the following:

26 (1) The term of the transfer agreement.

27 (2) The number of persons or entities providing the water to be
28 transferred.

29 (3) The amount of water to be transferred.

30 (4) The number of parties likely to be negatively affected by the
31 transfer.

32 (c) The petitioners seriously evaluated and considered
33 evidence presented regarding potential economic or
34 environmental impacts. Indicators that the proponents seriously
35 considered the evidence include, but are not limited to, all of the
36 following:

37 (1) Outreach to potentially affected parties in the early stages
38 of developing the transfer proposal.

39 (2) The establishment of, and consultation with, an advisory
40 committee of potentially affected parties.



1 (3) Modification of the proposal to address economic or
2 environmental concerns.

3 (d) The proposed transfer would not cause unreasonable
4 economic or environmental impacts.

5 (e) The petition discusses each claim of potential impact
6 individually, comments on whether or not the claim reaches the
7 threshold of ~~unreasonable~~ *unreasonableness*, and includes the
8 basis for that determination.

9 (f) The petition discusses the potential cumulative impacts of
10 potential impact claims, comments on whether or not the
11 cumulative claims reach the threshold of ~~unreasonable~~
12 *unreasonableness*, and includes the basis for that determination.

13 SEC. 4. Section 1738.5 is added to the Water Code, to read:

14 1738.5. As a part of a proceeding pursuant to Section 1738,
15 the board shall accept and consider evidence that the proposed
16 transfer will likely cause unreasonable economic or environmental
17 impacts.

18 SEC. 5. Section 1739 is added to the Water Code, to read:

19 1739. Notwithstanding Section 1738, the board may develop
20 and adopt an abbreviated process to approve long-term transfers
21 that it determines are least likely to cause unreasonable economic
22 or environmental impacts.

23 SEC. 6. Section 1739.5 is added to the Water Code, to read:

24 1739.5. Notwithstanding Section 1738, the absence of a
25 protest to a proposed transfer shall be deemed sufficient evidence,
26 for the purposes of this article, that the transfer would not cause
27 unreasonable economic or environmental impacts.

